10884

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1900~~ 1902.

No. ~~284~~ 86.

THE HOME FOR INCURABLES, PLAINTIFF IN ERROR

vs.

THE CITY OF NEW YORK.

N ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED APRIL 24, 1901

(18,131.)

(18,131.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 304.

THE HOME FOR INCURABLES, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Caption	*a*	1
Remittitur from court of appeals	*b*	1
Papers on appeal to court of appeals	1	2
Notice of motion	1	2
Petition	2	2
Examination of claimant	5	4
Stipulated facts	7	5
Order denying motion	8	6
Notice of appeal	10	7
Waiver of certification	11	7
Affidavit of no opinion	12	7
Order of affirmance	13	8
Notice of appeal	14	8
Stipulation as to papers on appeal	15	9
Affidavit of no opinion	16	9
Order for judgment on remittitur	17	9
Judgment on remittitur	19	10
Writ of error (copy)	21	11
Bond on writ of error	24	12
Assignment of errors	28	15
Certificate of chief judge as to Federal question	32	16
Clerk's certificate	33	16
Affidavit of service of citation	35	17
Citation	37	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 11, 1901.

a Court of Appeals.

In the Matter of the Petition of THE HOME FOR INCURABLES to Vacate or Reduce an Assessment for a Sewer in East 184th Street from Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

Papers on Appeal.

Truman H. Baldwin, attorney for petitioner, appellant, 31 Liberty street, borough of Manhattan, New York city.

John Whalen, corporation counsel and attorney for respondent, 2 Tryon row, borough of Manhattan, New York city.

b Court of Appeals of New York, *ss.*

Pleas in the court of appeals, held at the capitol in the city of Albany on the 19th day of March in the year of our Lord one thousand nine hundred and one before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, March 20th, 1901.

In the Matter of the Petition of THE HOME FOR INCURABLES to Vacate or Reduce an Assessment, &c., &c.

Be it remembered, that on the 28th day of January in the year of our Lord one thousand nine hundred and one, The Home for Incurables, petitioner, the appellant in this proceeding came here into the court of appeals by Truman H. Baldwin, its attorney, and filed in the said court, a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the first judicial department. And the City of New York, the respondent in said proceeding afterwards appeared in said court of appeals by John Whalen, corporation counsel, its attorney.

Which said notice of appeal and the return thereto filed as aforesaid, are hereto annexed.

c Whereupon, the said court of appeals having heard this proceeding argued by Mr. John M. Perry, of counsel for the appellant and by Mr. Theodore Connoly, assistant corporation counsel, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is, affirmed with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore, it is considered that the said order be, and the same hereby is, affirmed, with costs, as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto

aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office.

ALBANY, *March 20th*, 1901.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein, attached thereto.

[SEAL.] W. H. SHANKLAND, *Clerk.*

1 *Notice of Motion.*

Supreme Court, New York County.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East One Hundred and Eighty-fourth Street from Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

SIR: You will please take notice that upon the annexed petition, the admission of service endorsed thereon and the agreed evidence and stipulation as to facts attached hereto, I shall move this court, at a special term thereof to be held at part 1 thereof, at the county court-house, in the borough of Manhattan and city of New York, on the 18th day of October, 1900, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order granting the relief prayed for in said petition, and for such other and further relief as to the court shall seem just.

Dated New York, October 8, 1900.

TRUMAN H. BALDWIN,
Attorney for Petitioner, 31 *Liberty Street*,
Borough of Manhattan, New York City.

To John Whalen, Esq., counsel to the corporation.

2 *Petition.*

Supreme Court, City and County of New York.

In the Matter of the Petition of HOME FOR INCURABLES to Reduce Assessment for Sewer in East One Hundred and Eighty-fourth Street from Vanderbilt Avenue West to Washington Avenue, &c.

To the supreme court of the State of New York:

The petitioner in this matter, by Truman H. Baldwin, attorney, respectfully shows to this court and alleges:

That at the date of the confirmation of the above-entitled assess-

ment the above-named petitioner was and still is the owner of the lots hereinafter described, and your petitioner is the person aggrieved by said assessment thereon.

That on the 22d day of January, 1900, the assessment above entitled was confirmed by operation of law, and the title thereof was thereupon duly entered, with date of entry and date of confirmation, in the record of titles of assessments confirmed, and said assessment was thereby imposed and became a lien upon the lots described therein by the ward number one (1) in block number 3064 in the twenty-fourth ward of the city of New York.

3 Your petitioner further shows that said assessment is irregular, excessive and voidable for the following reasons, and alleges upon information and belief:

First. That the comptroller of the city of New York certified to the board of assessors the amount of interest at the rate of six per cent. per annum upon the several installments advanced or payments made on acount of said work, from the time of such payment or advance to a day sixty days after the date of his certificate, being, to a day two years after completion of said work assessed for in said assessment-list, and said interest has been included in the assessment herein and assessed upon petitioner's lots; but petitioner alleges that the mayor, aldermen and commonalty of the city of New York did not pay or expend said interest, but loaned its credit to borrow the money to pay for the prosecution of said work by the issue and sale of assessment bonds, which bonds bore a rate of interest not to exceed two and one-half per cent. per annum, and the assessment and collection of said interest will be an unlawful profit and gain made by the corporation of the city of New York for doing the work of said improvement. That said interest is in the nature of a penalty imposed upon petitioner for the non-payment of his proportion of the cost of said work for a period of time during which his just proportion had not been determined or apportioned nor any officer or agent of said corporation authorized or empowered to receive any sum of money from petitioner on account of said work, and during which he could not prevent the accruing or continuance of said penalty nor by any diligence prevent the imposition thereof, or relieve himself or his property therefrom.

That so much of the act of the legislature of the State of New York, known as section 868 of the New York city consolidation act of 1882, as purports to authorize and direct the making

4 of such interest certificate and the assessment of the amount thereof herein, is in violation of the consti-tion of the State of New York in that said portion of said act authorizes the taking of private property without just compensation, and said portion of said act purports to authorize an unlawful exercise of the power of taxation.

That pursuant to said act it was made the duty of said comptroller forthwith upon the completion of said work to have certified to the said board of assessors the amount of such interest to a day sixty days after the date of such certificate, but that said comptroller neglected to make such certificate until long after the completion of

said work and then said comptroller made his certificate that said interest calculated at the rate of six per cent. per annum to the said 4th day of February, 1899, was the sum of $7,837.33, a sum greater by $6,500.00 than said interest would have amounted to, had said interest certificate been made pursuant to said act.

That said interest forms no part of the cost of the said improvement.

Wherefore, your petitioner prays that said assessment may be vacated or reduced, and that the lien or liens created thereby, or by any subsequent proceeding, may be canceled and discharged or reduced, so far as the same affect said lots, and that the comptroller of the city of New York, and the collector of assessments and clerk of arrears may be directed to cancel and discharge or reduce said assessment, and the said lien or liens upon the records of their respective offices, so far as the same affect the lots aforesaid.

Dated February 8, 1900.

TRUMAN H. BALDWIN,
Attorney for Petitioner, 31 Liberty Street, New York.

5 *Examination of Claimant.*

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East One Hundred and Eighty-fourth Street from Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

NEW YORK, *June* 11, 1900.

The following testimony was taken in the proceeding entitled as above, at the office of the corporation counsel, subject to any objection that might be raised hereafter.

Appearances.

For the petitioner, Truman H. Baldwin, Esq.
For the city, George L. Sterling, Esq.

Counsel for petitioner introduces in evidence deed of A. P. Man and other trustees to the Home for Incurables, dated May 25, 1872, recorded in Westchester county, register's office, Liber 809 of Deeds, page 387, June 13, 1872.

Counsel for the petitioner states that this deed covers the property mentioned in the petition, to wit: Ward No. 1, block No. 3064.

Counsel for petitioner also introduces in evidence assessment-list for the improvement entitled as above, which was confirmed on January 22, 1900.

6 It appears from the list that the amount of the assessment was $74,349.94. It is made up as follows:

Contract	$58,960 08
Less excess of inspection	120 00
	$58,840 08

Expenses connected therewith:

Surveying	$5,380 53	
Inspecting	2,280 00	
Interest	7,837 33	
Binding assessment	12 00	
		15,509 86
		$74,349 94

The interest certificate of the comptroller is dated December 6, 1898, and the certificate of final completion is verified February 2, 1897.

It appears from the list that among the amount of assessments is the following.

Map No. 404, block No. 3064, ward No. 1. Home for Incurables	$4,657 28

Counsel for petitioner also introduces in evidence the contract for this improvement, which was made with William F. Norton and William Dalton, composing the firm of Norton & Dalton, dated January 9, 1896, and filed January 13, 1896. The payments were made upon this contract as follows:

1896.	
May 2d	$3,170 12
May 29th	5,599 65
July 8th	8,817 83
August 18th	6,395 02
September 26th	4,875 33
October 22d	3,839 67
December 11th	4,334 93
7	
1897.	
January 14th	$1,522 72
March 11th	16,519 95
December 2d	3,741 86
Total	$58,818 08
For repairs	22 00
	$58,840 08

Stipulated Facts.

The following facts are stipulated and agreed:

It appears from the books kept in the office of the comptroller of the city of New York that all payments which were made by the city on account of the above-entitled improvement were made from a fund which is designated "the street improvement fund."

During the year 1896 that fund amounted to $3,931,459.39. Of

that sum $2,131,459.39 consisted of moneys which were collected by the city from property-owners for assessments for local improvements confirmed during or previous to the year ending December 31, 1896, and $1,800,000 thereof consisted of amount realized from sale of bonds issued pursuant to sections 144 and 150 of the New York consolidation act, which bonds bore interest at the rate of three per cent. per annum, and which were sold at par.

During the year 1897 the said street improvement fund amounted to $2,919,062.48, of which $1,969,062.48 was collected from property-owners for assessments levied during or prior to the year ending December 31, 1897, and $950,000 was realized on the sale of assessment bonds pursuant to sections 144 and 150 of the New York city consolidation act, which bonds bore interest at the rate of three per cent., and were sold at par.

There is nothing in the books of the city to show whether
8 the specific sums which were used to make payment on the contract in question were derived from moneys paid into the fund on account of assessments collected, or from moneys realized from bond sales.

The interest included in the gross amount of this assessment ($7,837.33) is interest at the rate of six per cent. upon the several payments made to the contractors on account of this work, and is included in the total cost of the work pursuant to the provisions of section 868 of the consolidation act (re-enacted as sec. 946 of the charter).

Order Denying Motion.

At a special term, part I., of the supreme court, held at the county court-house in said county on the 19th day of November, 1900.

Present: Hon. John J. Freedman, justice.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East One Hundred and Eighty-fourth Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

The above-named petitioner, The Home for Incurables, having moved for an order granting the relief prayed for in its peti-
9 tion, and for such other and further relief as to the court shall seem just, now, upon reading and filing the notice of motion, dated the 8th day of October, 1900; the petition of Truman H. Baldwin, dated the 8th day of February, 1900; the examination of claimant taken June 11th, 1900, and the stipulation as to facts, and after hearing Truman H. Baldwin, Esq., counsel for the petitioner, in support of said motion, and George L. Sterling, Esq., assistant corporation counsel, in opposition thereto,

Upon motion of John Whalen, corporation counsel, it is

Ordered, that the said motion be and the same hereby is denied with ten ($10) dollars costs to the city of New York.

Enter.

J. J. F., *J. S. C.*

10 Supreme Court, New York County.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East One Hundred and Eighty-fourth Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

SIRS: You will please take notice that The Home for Incurables, the petitioner herein, hereby appeals to the appellate division of the supreme court, first department, from the order of Justice Freedman, entered on the 19th day of November, 1900, and from each and every part of said order.

Dated New York, November 20, 1900.

Yours, &c., TRUMAN H. BALDWIN,
Att'y for Petitioner, 31 Liberty Street, New York City.

To John Whalen, Esqre., corporation counsel; William Sohmer, Esqre., county clerk.

11 *Waiver of Certification.*

Supreme Court, New York County.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East One Hundred and Eighty-fourth Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

It is hereby stipulated that the foregoing printed papers constitute and are true copies of the original order, notice of appeal, and motion papers used in the court below and of the whole thereof.

Dated New York, November 28, 1900.

TRUMAN H. BALDWIN,
Attorney for Petitioner.
JOHN WHALEN,
Corporation Counsel.

12 *Affidavit of No Opinion.*

Supreme Court, New York County.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East One Hundred and Eighty-fourth Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

COUNTY OF NEW YORK, *ss:*

John M. Perry, being duly sworn, says:

I am counsel for The Home for Incurables, the petitioner herein. No opinion was given by Justice Freedman in denying the motion to reduce the assessment herein.

JNO. M. PERRY.

Sworn to before me this 20th day of November, 1900.
SIDNEY CURTIS,
Notary Public, Kings County.

Certificate filed in N. Y. Co.

13 *Order of Affirmance.*

At a term of the appellate division of the supreme court, in and for the first department, held at the court-house thereof in the county of New York, on the 21st day of December, 1900.

Present: Hon. Charles H. Van Brunt, P. J., Hon. William Rumsey, Hon. Edward Patterson, Hon. Morgan J. O'Brien, Hon. Chester B. McLaughlin, JJ.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East 184th Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22nd, 1900.

The above-named petitioner, The Home for Incurables, having appealed to the appellate division of the supreme court, first department, from the order entered herein in the office of the clerk of the county of New York on the 19th day of November, 1900, and the said appeal having come duly on to be heard, now, after hearing Truman H. Baldwin, Esq., of counsel for the petitioner, in support of said appeal, and George L. Sterling, Esq., assistant
14 corporation counsel, in opposition thereto, and due deliberation having been had, upon motion of John Whalen, corporation counsel, it is unanimously

Ordered, that the said order so appealed from as aforesaid be and the same hereby is affirmed with ten dollars costs and disbursements to the city of New York.

Notice of Appeal.

Supreme Court, Appellate Division, First Department.

In the Matter of the Petition of THE HOME FOR INCURABLES to Vacate or Reduce an Assessment for a Sewer in East 184th Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22nd, 1900.

SIRS: You will please take notice that the above-named petitioner hereby appeals to the court of appeals from the order of this court entered January 4th, 1901, which affirmed an order entered
15 herein on the 19th day of November, 1900, and from each and every part of said orders.

Dated New York, January 7th, 1901.

Yours, &c., TRUMAN H. BALDWIN,
Attorney for Petitioner, Appellant, 31 Liberty Street, New York City.

To John Whalen, Esqre., corporation counsel; William Sohmer, Esqre., county clerk.

It is hereby stipulated that the foregoing are true copies of all the papers before the courts below in making the orders appealed from, the order appealed from, and the notice of appeal, and certification thereof is hereby waived.

Dated New York, January 19th, 1901.

TRUMAN H. BALDWIN,
Attorney for Appellant.
JOHN WHALEN,
Corporation Counsel.

16 *Affidavit of No Opinion.*

Supreme Court, Appellate Division, First Department.

In the Matter of the Petition of THE HOME FOR INCURABLES to Vacate or Reduce an Assessment for a Sewer in East 184th Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22nd, 1900.

COUNTY OF NEW YORK, *ss:*

John M. Perry, being duly sworn, says:

I am counsel for The Home for Incurables, the petitioner-appellant herein.

No opinion was given by the justices of the appellate division in affirming the order which denied the motion to vacate or reduce the assessment herein.

JNO. M. PERRY.

Sworn to before me this 19th day of January, 1901.

SIDNEY CURTIS,
Notary Public, Kings County.

Certificate filed in N. Y. Co.

17 At a special term, part II of the New York supreme court, held in and for the county of New York, at the court-house thereof, in the said county, on the 22nd day of March, 1901.

Present: Hon. David McAdam, justice.

In the Matter of the Petition of THE HOME FOR INCURABLES, Appellant, to Vacate or Reduce an Assessment for a Sewer in East 184th Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22nd, 1900; The City of New York, Respondent. Order on Remittitur.

The above-named petitioner having appealed to the court of appeals of the State of New York, from the order of the appellate division of the supreme court in and for the first department, entered January 4th, 1901, which order affirmed an order of the supreme court entered on the 19th day of February 1900, denying relator's motion to vacate or reduce the above-mentioned assessment, and the said appeal having been duly argued at the court of appeals,

and the court of appeals after due deliberation having ordered and adjudged that the said order so appeal- from as aforesaid be affirmed with costs, and having further ordered that the record and proceedings therein be remitted to this court, there to be proceeded
18 upon according to law, now, upon reading and filing the said remittitur, and upon motion of John Whalen, corporation counsel, it is

Ordered that the said order and judgment of the court of appeals be and the same hereby are made the order and judgment of this court.

Enter.

D. McA., *J. S. C.*

19 New York Supreme Court, County of New York.

In the Matter of the Petitioner of THE HOME FOR INCURABLES, Appellant, to Vacate or Reduce an Assessment for a Sewer in East 184th Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22nd, 1900; The City of New York, Respondent. Judgment.

The above-named petitioner having appealed to the court of appeals of the State of New York, from the order of the appellate division of the supreme court in and for the first department, entered January 4th, 1901, which order affirmed an order of the supreme court entered on the 19th day of February, 1900, denying the relator's motion to vacate or reduce the above-mentioned assessment, and the said appeal having been duly argued at the court of appeals, and the court of appeals after due deliberation having ordered and adjudged that the said order so appealed from as aforesaid be affirmed with costs, and having further ordered that the record and proceedings therein be remitted to this court, there to be proceeded upon according to law, and an order having been duly entered in the office of the clerk of the county of New York on or about the 22nd day of March, 1901, making the order and judgment of the court of appeals the order and judgment of this court, and the costs of the respondent having been duly taxed at the
20 sum of $158.19, now upon motion of John Whalen, corporation counsel, it is

Ordered and adjudged that the said order and judgment of the court of appeals be and the same hereby are made the order and judgment of this court, and it is further

Ordered and adjudged that the above-named respondent, The City of New York, recover of the above-named appellant, The Home for Incurables, the sum of one hundred and fifty-eight and $\frac{19}{100}$ dollars ($158.19), the amount of its costs as taxed, and that it have execution therefor.

Dated, New York, April 4th, 1901.

WILLIAM SOHMER, *Clerk.*

21 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court upon a remittitur from the court of appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Home for Incurables, petitioner and appellant, and The City of New York, respondent and appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause

22 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The Home for Incurables as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of April, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

23 [Endorsed:] Court of appeals. In the matter of the petition of The Home for Incurables to reduce an assessment for a sewer in East 184th street and Vanderbilt avenue west to Washington avenue confirmed January 22, 1900. Writ of error. Truman H. Baldwin, attorney for petitioner-appellant, 31 Liberty street, New York city.

24 Know all men by these presents, that we, The Home for Incurables, a body corporate under the laws of the State of New York, as principal, and The American Surety Company of New York, also a body corporate under the laws of the State of New York and having an office and principal place of business at No. 100 Broadway, in the city of New York, as surety, are held and firmly bound unto The City of New York, in the sum of five hundred dollars ($500.00) to be paid to the said The City of New York, its certain attorney, successor or assigns, for the payment of which well and truly to be made, we bind ourselves and each of us, our successors and each of them, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 12th day of April, in the year of our Lord, one thousand nine hundred and one.

Whereas the above-named The Home for Incurables has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the supreme court of the State of New York, upon remittitur from the court of appeals of the said State of New York, in the proceeding wherein the said The Home for Incurables was petitioner and appellant, and The City of New York was respondent;

Now, therefore, the condition of this obligation is such that if the above-bounden, The Home for Incurables, appellant aforesaid, shall prosecute the said writ of error with effect and answer all costs which may be awarded against it if it shall fail to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKELS, *Vice-President.*
CORTLANDT S. VAN RENSSELAER,
[L. S.] *Attorney.*

Sealed and delivered and taken and acknowledged this — day of April, 1901, before me:

——— ———.

(Stamp.)

25 STATE AND COUNTY OF NEW YORK, *ss:*

On this 12th day of April, 1901, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the

manner provided by law. And the said David B. Sickels further said that he was acquainted with Cortlandt S. Van Rensselaer, and knew him to be one of the attorneys of said corporation, that the signature of said Cortlandt S. Van Rensselaer, subscribed to the said instrument, is in the genuine handwriting of the said Cortlandt S. Van Rensselaer, and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said David B. Sickels, vice-president.

[L. S.]

K. J. PEIRCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at the city of New York, this 12th day of April, 1901.

[L. S.]

CORTLANDT S. VAN RENSSELAER,
Attorney.

25½

American Surety Company of New York.

Incorporated April 14, 1884.

General offices, 100 Broadway.

Financial Statement, Mar. 30, 1901.

Resources.

Real estate and improvements	$3,054,567.16	
Stocks and bonds	1,515,584.00	
Bills receivable	701,667.99	
Cash in banks and offices	145,328.56	
Premiums in course of collection	234,423.26	
Accrued interest and rents	36,076.13	
		$5,687,647.10

Liabilities.

Capital stock	$2,500,000.00	
Surplus	1,000,000.00	
Undivided profits	1,093,306.39	
Premium reserve requirement	592,012.00	
Claims in process of adjustment	289,725.63	
Bills and accounts payable	212,603.08	
		$5,687,647.10

26 STATE OF NEW YORK, } ss:
County of New York, }

Cortlandt S. Van Rensselaer, being duly sworn, says: That he is an attorney of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company of New York is worth more than $2,500,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

CORTLANDT S. VAN RENSSELAER.

Subscribed and sworn before me this 12th day of April, 1901.

K. J. PEIRCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co's.

27 [Endorsed:] Court of appeals. In the matter of the petition of The Home for Incurables to reduce an assessment for a sewer in East 184th street and Vanderbilt avenue west to Washington avenue confirmed January 22, 1900. Copy. Bond on writ of error. Truman H. Baldwin, attorney for petitioner, appellant, 31 Liberty St., New York city. Approved R. W. Peckham associate justice of the Supreme Court.

28 The Supreme Court of the United States.

THE HOME FOR INCURABLES, Petitioner and Appellant,
against
THE CITY OF NEW YORK, Respondent and Appellee.

October Term, Nineteen Hundred.

Afterwards, to wit, on the fifteenth day of April, in the year of our Lord, nineteen hundred and one, at the October term for nineteen hundred, at the Capitol in the city of Washington, and District of Columbia, comes the said The Home for Incurables by John M. Perry, its attorney, and says that in the record and proceedings in the above-entitled matter there is manifest error, in this, to wit:

First. That by the judgment sought to be reviewed, The City of New York, the respondent-appellee is sustained in levying upon the property of the appellant, a special assessment for a local improvement, in substantial excess of the benefit accruing to it, in violation of the provisions of the fourteenth amendment to the Constitution of the United States.

Second. That such judgment sustains an assessment levied for a local improvement, one of the items of which is an interest charge upon certain advances to contractors calculated at the rate of six per cent. per annum, whereas the City of New York paid for the use of the money so advanced interest at the rate of three per cent. per annum or less, thereby making an arbitrary charge
29 against the appellant of a sum not expended by the city, and from which no benefit was received by appellant, in violation of the provisions of the fourteenth amendment of the Constitution of the United States.

Third. That such judgment sustains an *an* assessment for a local improvement which to the extent of the arbitrary interest charge included therein, is in excess of any benefit which the appellant receives from such improvement and for which, in default of payment of the assessment with the arbitrary interest charge included, the appellee may, in pursuance of the provisions of § 1027, &c., of ch. 378 of the Laws of the State of New York for the Year 1897 (the New York city charter), seize and sell its lands, all of which is in violation of the provisions of the fourteenth amendment of the Constitution of the United States.

Fourth. That in so far as the provisions of 946 of the said chapter 378 of the Laws of New York for the Year 1897, is an authorization for the judgment sought to be reviewed, such section is a violation of the provisions of the fourteenth amendment of the Constitution of the United States.

Fifth. That in said record aforesaid it appears that judgment was given for the respondent-appellee and against the petitioner-appellant, whereas by the law of the land judgment should have been given for the petitioner-appellant.

Sixth. That by the said judgment sought to be reviewed th petitioner-appellant is deprived of equal protection of the law, an is deprived of property without due process of law.

Wherefore The Home for Incurables, the petitioner-appellant prays this honorable court that its judgment may be had reversing the judgment of the supreme court of the State of New York, and directing the entry of an order by that court requiring a reduction of the assessment complained of to the extent of the interest complained of.

THE HOME FOR INCURABLES,
By JOHN M. PERRY, *Counsel.*

[Endorsed:] The Supreme Court of the United States. The Home for Incurables, petitioner and appellant, against The City of New York, respondent and appellee. Assignment of error. Truman H. Baldwin, attorney for petitioner-appellant, 31 Liberty street, New York city.

Court of Appeals.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East 184th Street and Vanderbilt Avenue West to Washington Ave., Confirmed January 22, 1900; Home for Incurables, Appellant; The City of New York, Respondent.

I, Alton B. Parker, chief judge of the court of appeals of the State of New York, do hereby certify that in this proceeding the petitioner-appellant, The Home for Incurables, claimed in the courts of this State that the imposition of all or a part of the assessment on its land as set forth in the record herein was in violation of the statutes and constitution of the State of New York and of the provisions of the fourteenth amendment of the Constitution of the United States and constituted a taking of property without due process of law; that the respondent in this proceeding contended that the said assessment was neither in whole nor in part violation of the statutes and constitution of the State of New York or of the Constitution of the United States, and also that the said Home for Incurables had no remedy by petition to correct any errors in the said assessment; that this court decided that the said Home for Incurables did have a remedy by petition in the manner and form of the proceeding adopted by it to correct any errors in the said assessment, but that the assessment complained of was valid and without error as to each and every part thereof.

Witness my hand and the seal of this court at the city of Albany, in the State of New York, on this third day of April, 1901.

ALTON B. PARKER, *Ch. J.*

STATE OF NEW YORK, *County of New York,* } ss.:

I, William Sohmer, clerk of the said county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original record in the matter of the petition of The Home for Incurables to vacate or reduce assessment

for a sewer in East 184th street from Vanderbilt Ave. west to Washington Ave., confirmed Jan. 22nd, 1900, on file in my office, and that the same is a correct transcript therefrom and the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 20th day of April, 1901.

[Seal Supreme Court, New York.]

WM. SOHMER, *Clerk.*

[Ten-cent United States internal-revenue stamp, canceled Apr. 23, 1901.]

34 [Endorsed:] Court of appeals. In the matter of the petition of The Home for Incurables to reduce an assessment for a sewer in East 184th street and Vanderbilt avenue west to Washington avenue, confirmed January 22, 1900. Certificate. Truman H. Baldwin, attorney for petitioner, appellant, 31 Liberty street, New York city.

35 Court of Appeals.

In the Matter of the Petition of THE HOME FOR INCURABLES to Reduce an Assessment for a Sewer in East 184th Street and Vanderbilt Avenue West to Washington Avenue, Confirmed January 22, 1900.

COUNTY OF NEW YORK, *ss.:*

Sidney Curtis, being duly sworn, says:

I am managing clerk in the office of John M. Perry, of counsel for the petitioner-appellant herein, The Home for Incurables, at 55 William street, in the city of New York, and am over the age of twenty-one years.

On the 22nd day of April, 1901, between the hours of two and three o'clock in the afternoon of said day I served upon the corporation counsel the within citation at his office, No. 2 Tryon row, in said city. Such service was made by delivering to, and leaving with, Andrew T. Campbell personally, who is the chief clerk in the office of the said John Whalen, the corporation counsel, and who is authorized to accept the service thereof, a copy of the within original citation and at the same time exhibiting to him the signature of Hon. Rufus W. Peckham, associate justice of the Supreme Court of the United States, attached thereto.

At the time of such service I knew the person so served to be Andrew T. Campbell, the chief clerk in the office of said cor-
36 poration counsel, and the person authorized to accept the service of said citation for said corporation counsel.

SIDNEY CURTIS.

Sworn to before me this 23rd day of April, 1901.

JNO. S. COMFORT,
Notary Public, Kings County.

Certificate filed in N. Y. Co.

37 UNITED STATES OF AMERICA, *ss:*

To the City of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of New York wherein The Home for Incurables is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 17th day of April, in the year of our Lord one thousand nine hundred and one.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Court of appeals. In the matter of the petition of The Home for Incurables to reduce an assessment for a sewer in East 184th street and Vanderbilt avenue west to Washington avenue, confirmed January 22, 1900. Citation. Truman H. Baldwin, attorney for petitioner, appellant, 31 Liberty St. N. Y. city.

Endorsed on cover: File No. 18,131. New York supreme court. Term No. 304. The Home for Incurables, plaintiff in error, *vs.* The City of New York. Filed April 24th, 1901.